BRUNEI REPORTS

Lee Tian Hua v Chan Moi Hiong

HIGH COURT (BANDAR SERI BEGAWAN) – SUIT NO 55 OF 1988
ROBERTS CJ
8 AUGUST 1988

Contract – Claim for balance of money lent – Alternative claim for amount due on dishonoured cheques given in payment – Defence that plaintiff is moneylender – Moneylenders Act (Cap 62), s 2(2) & 3

Moneylenders – Claim for balance of money lent – Payment of interest – Whether plaintiff a moneylender

The plaintiff claimed the sum of $46,000, the balance of moneys lent by the plaintiff to the defendent between September 1981 and September 1986. Alternatively she claimed repayment of $46,000 from the defendant as drawer of two cheques for the total of $46,000. The defendant claimed that she had made payments of interest and that the plaintiff was a moneylender.

Held, allowing the application:

(1) Although in this case on the evidence, interest was charged on the loan, this was the only occasion on which a loan had been made by the plaintiff and therefore the plaintiff was not, at the relevant times, a moneylender within the meaning of the Moneylenders Act.

(2) Judgment should be given for the sum of $46,000 to the plaintiff. In the alternative, the defendant is ordered to pay the sum of $46,000 which was due under the two cheques which were presented to the banks of the plaintiff and dishonoured.

Cases referred to

1 *Esmail Sahib* v *Noordin* [1951] MLJ 98 (folld)
2 *Teng Ah Seah* v *Teh Choo Pheng* 2 MC 253 (folld)

Legislation referred to

Moneylenders Act (Cap 62) ss 2(2), 3

Daljit Singh for the plaintiff.
Defendant in person.

Cur Adv Vult

Roberts CJ: The plaintiff's statement of claim, dated 10 February 1988, claims the sum of $46,000. This, according to the statement of claim, was the balance of moneys lent by the plaintiff to the defendant between September 1981 and September 1986. A total sum of $51,000 was said by the plaintiff to have been lent and an amount of $5,000 was repaid, leaving a balance of $46,000 due. In the alternative, the plaintiff seeks repayment of $46,000 from the defendant as the drawer of two cheques, one dated 21 December 1987, for $15,000, the other dated 25 February 1988, for $31,000.

In spite of various reminders, the defendant failed to repay the sum claimed, or any part thereof. By her defence, Mrs Chan admitted that she had been lent $46,000 by the plaintiff and makes no mention of the repayment by her of $5,000. She does, however, allege that she has repaid 71 instalments amounting to $28,400, leaving a total of $17,600 due only. The pleadings do not make it clear as to whether such payments are by way of interest or repayment of the capital sum lent to her. She alleges that she was induced to sign the two cheques by duress and that, in any event, this was a money-lending transaction, and thus illegal, by a person who is not licensed under the Moneylenders Act (Cap 62) to conduct such business.

I am satisfied from the evidence of the plaintiff that a sum in total of $51,000 was lent by her to the defendant, as to $20,000 in September 1981 and $31,000 in September 1986. The defendant attempted to change her story today and asserted that money had been lent to her on three occasions, comprising $20,000, $10,000 and $21,000, although this was not alleged in her defence of 16 April 1988.

I am further satisfied that a sum of $5,000 has been repaid by her by way of capital repayment to the plaintiff. The important question, however, is whether she made other payments from 1981 onwards, and whether, if such payments were made between then and 1987 as she asserts, they were repayments of interest or of capital.

As I have already said, the pleadings are silent as to whether the payments which the defendant says she made were of interest or of capital, though the suggestion there, as I read the defence, is that these were payments by way of capital rather than of interest. However, it is clear from the defendant's evidence today that her assertion is that all the payments that she made between 1981 and 1987 were payments of interest and that the capital sum of $51,000, with the exception of $5,000 which she repaid, remains outstanding to the plaintiff.

The payments made by the defendant are to be found listed in an exercise book which, according to her, she completed each month after making payment to the plaintiff and I have to decide whether I believe her version of the events or not.

The plaintiff, perhaps for understandable reasons, has alleged not only that she was not a moneylender but that she charged no interest whatever on the loan. This she asserted in spite of the fact that there is no written record of the loans which she made to the defendant beginning with the substantial sum of $20,000 in 1981.

Mrs Lee took no steps, according to her, to enforce this loan for a considerable period, amounting to about five years, when she made the second loan. She has asked me to believe that she was not protected at all and that she was charging no interest on a loan that was otherwise completely unsecured.

In my judgment, the plaintiff was charging interest from the time that the loan was made in 1981 until the defendant ceased to pay in 1987 and this interest was charged on the capital sum lent, with the agreement of the defendant from the outset.

Section 2(2) of the Moneylenders Act, however, reads as follows:

> A person who is proved to have lent money at interest on one occasion shall until the contrary be proved be deemed to have habitually lent money at interest.

The effect of that subsection is to convert such a person into a moneylender, who may not carry on business, unless he is properly licensed by the State Secretary under s 3.

Evidence has been given by the plaintiff, supported by the evidence of other witnesses, that this was the only occasion on which a loan had been made by the plaintiff, though I do not accept that no interest was charged this time.

In *Esmail Sahib* v *Noordin*,[1] Spencer Wilkinson J commented:

> It is difficult to see how else a plaintiff can discharge this burden except by himself giving evidence to the effect that he is not a moneylender and by submitting to cross-examination on the point.

That was what the plaintiff did in this case.

Similarly, in finding that a plaintiff was not a moneylender, Rigby J in *Teng Ah Seah* v *Teh Choo Pheng*[2] commented:

> I am fully satisfied on the facts of this case that the transactions referred to in evidence were entirely without system or continuity; that the plaintiff never advertised or announced himself or held himself out in any way as carrying on a moneylending business; and, indeed, that he was not carrying on a moneylending business. I am satisfied, therefore, that he was not a moneylender within the meaning of the Ordinance and that he is accordingly entitled to judgment against the defendant.

Similarly, I am satisfied that the plaintiff is not and was not, at the relevant times, a moneylender within the meaning of Cap 62. Consequently, the plaintiff was entitled to charge interest as, in my view, she did.

I accept that the payments were made, as listed in the exercise book by the defendant, but I am sure that each of these payments, except that for $5,000, was a payment of interest. Furthermore, it was a payment of interest which accorded with the terms on which the loan was made by Mrs Lee. Consequently, the capital sum of $51,000 lent, less the $5,000 repaid, remains outstanding and owed by the defendant to the plaintiff.

Late last year and early this year, two cheques were drawn by the defendant. They were drawn on different banks but both were signed by the defendant. The first, according to the plaintiff, was presented to the International Bank of Brunei and was returned to her, because there were no funds in the name of the defendant to meet it. The second cheque, drawn on the Overseas Union Bank Ltd for $31,000, also signed by the defendant, was presented by the plaintiff to the bank. The plaintiff was informed that the defendant had closed her account there a long time before and that there were no funds to meet it. Thus both cheques, drawn by the defendant, have not been met by the banks on which they were drawn.

The defendant's story is that she signed these cheques because she was under pressure to do so and because on each occasion when she did so in her shop the plaintiff, with her sister-in-law and Mr Lim, had put pressure on her to do so, although she did not really know what she was doing. I am afraid that I find myself unable to accept her version of what happened on those occasions. I think that she signed the cheques, because this seemed to be a way of obtaining further time for the repayment of the major amounts which were still owing by her to the plaintiff.

I am, therefore, satisfied that the plaintiff is entitled to recover from the defendant the sum of $46,000 and give judgment for this sum to the plaintiff.

In the alternative, I order the defendant to pay the sum of $46,000 which was due under the two cheques which were presented to the banks by the plaintiff and dishonoured.

I think that there should be interest on the judgment at the rate of 6% from the month after the date on which the last payment of interest was made, ie from 1 July 1987 onwards.

The plaintiff shall have the costs. These must be taxed.

Order accordingly.

Solicitors: *Sandhu & Co.*

Reported by *Prof Ahmad Ibrahim*